



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**JUL 20 2015**

**ACTION MEMORANDUM**

**SUBJECT:** Change in Scope, Ceiling Increase Consistency Exemption for the Time-Critical Removal Action at the 35th Avenue Site, Birmingham, Jefferson County, Alabama

**FROM:** Richard J. Jardine, On-Scene Coordinator  
Emergency Response, Removal and Prevention Branch

**THRU:** James W. Webster, Chief  
Emergency Response, Removal and Prevention Branch

**TO:** Franklin E. Hill, Director  
Superfund Division

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document approval of the proposed change to the scope of work and ceiling increase under a consistency exemption from the amended Action Memorandum dated January 6, 2015. The original Action Memorandum, dated September 25, 2013, identified a time-critical removal action for the 35th Avenue Site (the Site), located in Birmingham, Jefferson County, Alabama. The March 12, 2014, Action Memorandum identified a change in scope to fully address the Remedial, as well as the Removal goals, and to minimize the disruption of the affected homeowners in the community. The first two Action Memoranda proposed action that constitute what is considered the Phase 1 action for this Site. The August 11, 2014, Action Memorandum proposed a removal action that addressed contaminated soil exceeding cleanup levels at properties where children live or regularly use. This was the Phase 2 action for this Site. The January 6, 2015, Action Memorandum, the Phase 3 action for this Site, addressed contaminated soil exceeding two times the cleanup levels for respective cancer-causing substances on properties within the Site boundary. This request, the Phase 4 action for the Site, includes an additional Change in Scope, Ceiling Increase and approval for a Consistency Exemption to the \$2 million limitation and 12-month statutory limit for the Removal Action. The total project ceiling for this time-critical removal action will be **\$26,377,000** of which **\$20,147,000** will be funded through the Regional Removal Allowance.

**II. SITE CONDITIONS AND BACKGROUND**

CERCLIS ID: ALN000410750  
Site ID #: B4M3  
Removal Category: Time-Critical Removal Action

All information pertaining to Site conditions and background that were identified in the original Action Memorandum of September 25, 2013, remain the same in this amended Action Memorandum.

### **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

All information pertaining to threats to public health or welfare or the environment, and statutory or regulatory authorities described in the original Action Memorandum, dated September 25, 2013, still apply to this amended Action Memorandum.

### **IV. ENDANGERMENT DETERMINATION**

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare or the environment.

### **V. EXEMPTION FROM STATUTORY LIMITS**

All information pertaining to exemptions from statutory limits described in the original Action Memorandum, dated September 25, 2013, and the Amended Action Memorandum, dated March 12, 2014, August 11, 2014, and January 6, 2015, still apply to this Amended Action Memorandum. While the removal action has been implemented over the past 18 months, the U.S. Environmental Protection Agency has developed a Hazard Ranking Score for this Site and has proposed this Site for consideration to the National Priorities List. Further, the Remedial Program has begun the process of scoping activity to be conducted as a final remedy for this Site. The removal action proposed by this memorandum will be consistent with any anticipated remedial action and will not impede the remedial action. As appropriate, this removal action will achieve some remedial action goals such as excavations to 24 inches below land surface where contaminated soil meets or exceeds cleanup levels. Additionally, this proposed removal action will be appropriate in that it will avoid a foreseeable threat for these properties, prevent migration of contaminants and will comply with the Off-site Rule. It is anticipated that any subsequent potentially responsible party or fund-lead remedial actions at this Site will include excavation of contaminated soil and off-site disposal. Therefore, removal actions proposed herein are expected to be consistent with future remedial action.

### **VI. PROPOSED ACTIONS AND ESTIMATED COSTS**

#### **A. Proposed Actions**

##### **1. Proposed Action Description**

The intent of this amended action remains focused on reducing the exposure risk to the community members who live at or may use the parcels that exceed the Removal Management Levels (RML) for the three contaminants of concern: arsenic, lead and polycyclic aromatic hydrocarbons. This action specifically addresses those properties where contamination meets Site cleanup levels. The proposed actions include the following:

- a. Survey properties to verify current property use;
- b. Inventory existing plants, grasses, utilities and outbuildings on each property;
- c. Remove impediments, as allowed, to provide for an appropriate excavation effort;

- d. Excavate the contaminated soil down to a maximum depth of approximately 24 inches below ground surface where the soil exceeds Site cleanup levels, or less than 24 inches if such excavation is sufficient to remove the contamination to levels below Site cleanup levels from each property;
- e. Backfill with clean soil, shape to original contours and lightly compact;
- f. Replace or repair any EPA-damaged concrete, piping, fencing, outbuildings, etc.;
- g. Provide temporary on-site storage of contaminated soil generated during removal activities pending further waste characterization and profiling, treatment, reuse and/or recycling;
- h. Conduct in-situ/ex-situ screening and/or collect samples for laboratory analysis as necessary;
- i. Perform on-site treatment of characteristically hazardous waste, if appropriate;
- j. Arrange for off-site transportation and disposal/treatment of contaminated soil according to applicable regulations;
- k. Maintain Site security and limit access during implementation of the removal action;
- l. Conduct all removal actions pursuant to an EPA-approved Health and Safety Plan;
- m. Temporarily relocate residents if absolutely necessary during excavation activity; and,
- n. Re-establish vegetation.

## **2. Contribution to Remedial Performance**

The proposed removal action is warranted to address the threats discussed in Section III, which meet the NCP Section 300.415 (b) (2) removal criteria. The scope of this amended action is to address the parcels in the community that meet Site cleanup goals. At this time, approximately 260 residential parcels will be addressed. The EPA is actively seeking access to approximately 850 parcels that have not been sampled yet. If these properties meet the EPA's removal criteria, the EPA will consider a removal action under this Action Memo. The proposed Removal action will meet the Remedial goals which includes excavation to approximately 24 inches below land surface on properties where soil contamination exceeds cleanup goals to that depth.

## **3. Applicable or Relevant and Appropriate Requirements (ARARs)**

In accordance with the NCP at 40 CFR § 300.415(j), on-site removal actions conducted under CERCLA are required to attain applicable or relevant and appropriate requirements (ARAR) to the extent practicable considering the exigencies of the situation or provide grounds for invoking a CERCLA waiver under Section 121(d)(4). In determining whether

compliance with ARARs is practicable, the lead agency may consider appropriate factors including (1) the urgency of the situation and (2) scope of the removal action to be conducted. Additionally, under 40 CFR § 300.405(g)(3), other advisories, criteria or guidance may also be considered (so-called To-Be-Considered or TBC) when conducting the removal action.

Under CERCLA Section 121(e)(1), federal, state or local permits are not required for the portion of any removal or remedial action conducted entirely on-site as defined in 40 CFR § 300.5. See also 40 CFR §§300.400(e)(1) & (2). On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action. On-site response actions must comply, to the extent practicable, with substantive but not administrative requirements of ARARs. Off-site activities such as transportation and disposal of wastes are required to comply with all applicable requirements, including the administrative portions.

As provided in CERCLA Section 121(d)(3) and the Off-site Rule at 40 CFR §300.440 *et seq.* the off-site transfer of any hazardous substance, pollutant or contaminant generated during the response action will be sent to a treatment, storage or disposal facility that is in compliance with applicable federal and state laws and has been approved by the EPA for acceptance of CERCLA waste.

The EPA has corresponded with the Alabama Department of Environmental Management (ADEM) regarding the ARARs for this Site. The EPA identified cleanup parameters as stated in this Action Memorandum and specifically requested identification of any State ARARs for the EPA's consideration prior to initiation of the on-site response action activities. ADEM identified some non-promulgated requirements and some "to be considered" requirements that the EPA has addressed in writing.

#### **4. Project Schedule**

Initial removal activities related to Site preparation are anticipated to begin within one month of approval of this Action Memorandum and receipt of funding for proposed actions. It is anticipated that once activities begin, this removal action will take approximately 30 months of on-site work to substantially complete, plus additional time to establish vegetation dependent upon weather conditions.

#### **B. Estimated Costs**

<b><u>Extramural Costs:</u></b>	<b><u>Current Ceiling</u></b>	<b><u>Proposed Increase</u></b>	<b><u>Proposed Ceiling</u></b>
<b><u>Regional Removal Allowance Costs:</u></b>			
ERRS	\$6,115,000	\$14,032,000	\$20,147,000
<b><u>Other Extramural Costs Not Funded from the Regional Allowance:</u></b>			
START	\$1,800,000	\$ 2,315,000	\$ 4,115,000
Subtotal	\$7,915,000	\$16,347,000	\$24,262,000
Costs Contingency	\$ 515,000	\$ 1,600,000	\$ 2,115,000
<b>TOTAL EXTRAMURAL COSTS</b>	<b>\$8,430,000</b>	<b>\$17,947,000</b>	<b>\$26,377,000</b>

## VII. OUTSTANDING POLICY ISSUES

No outstanding policy issues have been identified at this time.

## VIII. ENFORCEMENT

Enforcement activities have been initiated and are ongoing. It is expected this action for the Site will be conducted as a fund-lead removal action. See Attachment 1, "Enforcement Addendum" for more details.

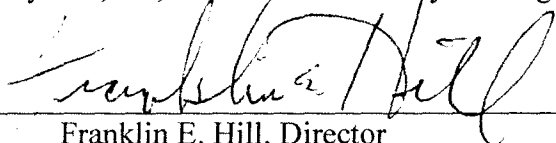
The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$41,939,100 using the following formula:

$$(\text{Total Extramural Costs} + \text{Total Intramural Costs}) + (55.33\% (\text{Total Extramural Costs} + \text{Total Intramural Costs})) = \text{Estimated EPA Costs, or } (\$26,000,000 + 1,000,000) + ((55.33\% * (\$26,000,000 + 1,000,000))) = \$41,939,100^1$$

## IX. RECOMMENDATION

This decision document represents a selected removal action for the 35th Avenue Site in Birmingham, Jefferson County, Alabama, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site meet the NCP section 300.415(b) criteria for a removal and the CERCLA section 104(c) consistency exemption from the \$2 million and 12-month limitations. I recommend your approval of the proposed removal action and the \$2 million, 12-month consistency exemption. This removal action is anticipated to be fund-lead, with a total project ceiling, if approved, of **\$26,377,000** of which approximately **\$20,147,000** will be funded by the Regional Removal Allowance.

APPROVED:  DATE: 7/20/15  
Franklin E. Hill, Director  
Superfund Division

DISAPPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Franklin E. Hill, Director  
Superfund Division

### Attachments:

Enforcement Addendum

Photographs (posted to [www.epaosc.org/35Ave](http://www.epaosc.org/35Ave))

Figures (posted to [www.epaosc.org/35Ave](http://www.epaosc.org/35Ave))

<sup>1</sup>Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.